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## **CHAPTER 55. ALASKA SECURITIES ACT**

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### **Article 1. FRAUDULENT AND OTHER PROHIBITED PRACTICES**

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**Sec. 45.55.010. Sales and purchases.** (a) A person may not, in connection with the offer, sale, or purchase of a security, directly or indirectly

- (1) employ a device, scheme, or artifice to defraud;
- (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person.

(b) A person may not rely on an exemption from registration under AS 45.55.900 or on a security being a federal covered security to avoid the application of (a) of this section.

**Sec. 45.55.020. Advisory activities.** (a) A person who receives a consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, may not

(1) employ a device, scheme, or artifice to defraud the other person; or

(2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other person.

(b) A state investment adviser may not enter into, extend, or renew an investment advisory contract unless the contract provides in writing that

(1) the state investment adviser may not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or a portion of the funds of the client; and

(2) the state investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within a reasonable time after the change.

(c) The provisions of (b)(1) of this section do not prohibit an investment advisory contract that provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. The administrator, on request, may waive the provisions of (b)(1) of this section for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-5 (Investment Advisors Act of 1940).

(d) Repealed.

(e) A state investment adviser may not take or have custody of the securities or funds of a client if

(1) the administrator by regulation prohibits custody, or

(2) in the absence of regulation, the state investment adviser fails to notify the administrator that the adviser has or may have custody.

**AS 45.55.023. Unethical business practices of state investment advisers, investment adviser representatives, and federal covered advisers.** (a) A person who is a state investment adviser, investment adviser representative, or federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the client. The provisions of this section apply to federal covered advisers only to the extent that the conduct alleged is fraudulent or deceptive under AS 45.55.010(a) or AS 45.55.020(a), or to the extent otherwise provided by P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996). While the extent and nature of the duty to act primarily for the benefit of the client varies according to the nature of the relationship between an investment adviser and its clients and the circumstances of each case, a state investment adviser, an investment adviser representative, or a federal covered adviser may not engage in dishonest or unethical business practices in the investment advisory business under AS 45.55.060(a)(7), including

(1) recommending to a client to whom investment supervisory, management, or consulting services are provided, the purchase, sale, or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and other information known to the state investment adviser, investment adviser representative, or federal covered adviser;

(2) exercising discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary

authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority unless the discretionary power relates solely to the price at which or the time when an order involving a definite amount of a specified security will be executed, or both;

(3) in a client's account inducing trading that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account if the state investment adviser, investment adviser representative, or federal covered adviser can directly benefit from the number of securities transactions effected in a client's account;

(4) placing an order to purchase or sell a security for the account of a client without authority to do so;

(5) placing an order to purchase or sell a security for the account of a client upon the instruction of a third party without first having obtained a written third-party trading authorization from the client;

(6) borrowing money or securities from a client unless the client is a financial institution engaged in the business of loaning money or the client is an affiliate of the state investment adviser or federal covered adviser borrowing the money or securities;

(7) loaning money to a client unless the state investment adviser or federal covered adviser loaning the money is a financial institution engaged in the business of loaning money or the client is an affiliate of the state investment adviser or federal covered adviser;

(8) misrepresenting to an advisory client or prospective advisory client the qualifications of the state investment adviser, an employee of the state investment adviser, the investment adviser representative, the federal covered adviser, or an employee of the federal covered adviser; misrepresenting the nature of the advisory services being offered or fees to be charged for a service; or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees not misleading in light of the circumstances under which the statements are made;

(9) providing a report or recommendation to an advisory client prepared by someone other than the state investment adviser, the investment adviser representative, or the federal covered adviser without disclosing that the report or recommendation was prepared by someone else, except that this prohibition does not apply to a situation where the state investment adviser, investment adviser representative, or federal covered adviser uses published research reports or statistical analyses to render advice or where a state investment adviser, an investment adviser representative, or a federal covered adviser orders the research reports or statistical analyses in the normal course of providing service;

(10) charging a client an unreasonable advisory fee;

(11) failing to disclose to a client in writing before any advice is rendered a material conflict of interest relating to the state investment adviser, federal covered adviser, an employee of the state investment adviser or federal covered adviser, or the investment adviser representative that could reasonably be expected to impair the rendering of unbiased and objective advice, including

- (A) compensation arrangements connected with advisory services to a client if the arrangements are in addition to compensation from the client for those services; and
- (B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions according to that advice will be received by the adviser or the employees or investment adviser representatives of the adviser;
- (12) guaranteeing a client that a specific investment result will be achieved with the advice given;
- (13) publishing, circulating, or distributing an advertisement that does not comply with 17 C.F.R. 275.206(4) - 1 adopted under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), as that regulation exists on or after the effective date of this Act;
- (14) disclosing the identity, affairs, or investments of a client unless required by law or unless consented to by the client;
- (15) taking action, directly or indirectly, with respect to securities or funds in which a client has a beneficial interest if the state investment adviser or federal covered adviser has custody or possession of the securities or funds and the adviser's action does not comply with the requirements of 17 C.F.R. 275.206(4) - 2 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers Act of 1940) , as that regulation exists on or after the effective date of this Act;
- (16) entering into, extending, or renewing an investment advisory contract unless the contract is in writing and discloses in substance
  - (A) the services to be provided;
  - (B) the term of the contract;
  - (C) the advisory fee, the formula for computing the fee, whether the fee is negotiable, and the amount of the prepaid fee to be returned in the event of contract termination or nonperformance;
  - (D) whether the contract grants discretionary power to the adviser; and
  - (E) that an assignment of the contract may not be made by a state investment adviser without the consent of the other party to the contract; in this subparagraph, "assignment" includes a direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, but, if the adviser is a partnership, an assignment of an investment advisory contract is not considered to result from the death or withdrawal of a minority of the partners of the adviser having only a minority interest in the business of the adviser, or from the admission to the adviser of one or more partners who, after admission, will be only a minority of the partners and will have only a minority interest in the business;
- (17) failing, in violation of 15 U.S.C. 80b-4a (Investment Advisers Act of 1940), to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information;
- (18) entering into, extending, or renewing an advisory contract that would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph applies to all state investment advisers registered or required to be registered

under this chapter and to all investment adviser representatives registered or required to be registered under this chapter, notwithstanding whether the adviser or representative would be exempt from federal registration under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

(19) including in an advisory contract a condition, stipulation, or provision binding a person to waive compliance with a provision of this chapter or 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

(20) engaging in an act, a practice, or a course of business that is fraudulent, deceptive, or manipulative in contravention of 15 U.S.C. 80b-6(4) (Investment Advisers Act of 1940) and the rules adopted under that act, notwithstanding the fact that the state investment adviser may not be registered or required to be registered under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

(21) engaging in conduct or an act, either indirectly or through or by another person, that would be unlawful for the person to do directly under this chapter or a regulation adopted under this chapter;

(22) acting as principal for the person's own account, knowingly selling a security to or purchasing a security from a client, acting as broker for a person other than the client, or knowingly effecting a sale or purchase of a security for the account of the client without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and without obtaining the written consent of the client to the transaction; the prohibitions in this paragraph do not apply to a transaction with a customer of a broker-dealer if the broker-dealer is not acting as a state investment adviser or federal covered adviser in relation to the transaction.

(b) The conduct prohibited by (a) of this section is not the exclusive conduct prohibited by (a) of this section. Engaging in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive practice, is considered unethical practice or conduct under AS 45.55.060(a)(7). The federal statutory and regulatory provisions referred to in this section apply to a state investment adviser and a registered investment adviser representative of either a state investment adviser or a federal covered adviser, regardless of whether the federal provisions limit their application to state investment advisers or federal covered advisers subject to federal registration. With respect to a federal covered adviser, the provisions of this section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440 (National Securities Markets Improvement Act of 1996) and only when the conduct proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and 45.55.020(a).

**Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of broker-dealers and agents.** A broker-dealer and an agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. The acts and practices that are contrary to those standards and principles, that constitute dishonest or unethical practices in the securities business under AS 45.55.060(a), and that are grounds for imposition of administrative fines, censure, denial, suspension, revocation of a registration, or other appropriate disciplinary action include

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of the broker-dealer's customers;

(2) inducing in a customer's account trading that is excessive in size or frequency in view of the financial resources and character of the account;

(3) recommending to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based on reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and other relevant information known by the broker-dealer or agent;

(4) executing a transaction on behalf of a customer without authorization to execute the transaction;

(5) exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer unless the discretionary power relates solely to the time or price for the execution of orders;

(6) executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) failing to segregate a customer's free securities or securities held in safekeeping;

(8) hypothecating a customer's securities without having a lien on the securities unless the broker-dealer or agent receives from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules of the United States Securities and Exchange Commission;

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the securities or receiving an unreasonable commission or profit;

(10) failing to furnish to a customer purchasing securities in a registered offering a final or preliminary prospectus no later than the date of confirmation of the transaction and, if the prospectus is preliminary, failing to furnish a final prospectus within a reasonable time after the effective date of the offering;

(11) charging unreasonable or inequitable fees for services performed, including fees for miscellaneous services, such as the collection of money due for principal, dividends, or interest, the exchange or transfer of securities, appraisals, safekeeping, the custody of securities, and other services related to the broker-dealer's securities business;

(12) offering to buy from or sell to a person a security at a stated price unless the broker-dealer is prepared to purchase or sell at that price and under the conditions that are stated at the time of the offer to buy or sell;

(13) representing that a security is being offered to a customer at market price or at a price relevant to the market price unless the broker-dealer or agent knows or has reasonable grounds to believe that a market for the security exists other than that made, created, or controlled by

(A) the broker-dealer;

(B) a person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of the security; or

(C) a person controlled by, controlling, or under common control with the broker-dealer;

(14) effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including

(A) effecting a transaction in a security that does not involve a change in the beneficial ownership;

(B) entering an order for the purchase or sale of security with the knowledge that another order of substantially the same price for the sale of the same security has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; nothing in this subparagraph prohibits a broker-dealer from entering a bona fide agency cross transaction for its customers as long as the cross transaction is noted on the confirmation and monthly account statements;

(C) effecting alone or with one or more other persons a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(15) guaranteeing a customer against risk or loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer or agent with or for the customer;

(16) publishing or circulating or causing to be published or circulated a notice, a circular, an advertisement, a newspaper article, an investment service, or a communication of any kind that purports to

(A) report a transaction as a purchase or sale of a security unless the broker-dealer or agent believes that the transaction described was a bona fide purchase or sale of the security; or

(B) quote the bid price or asked price for a security unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

(17) making a written or oral advertising or sales presentation that is in any manner deceptive or misleading, including

(A) distributing nonfactual data or material, or making a presentation that is based on conjecture or unfounded or unrealistic claims or assertions, in a brochure, flyer, or other display by words, pictures, graphs, or other method designed to supplement, detract from, supersede, or defeat the purpose or effect of a prospectus or disclosure;

(B) using supplementary material in connection with the offer of a particular security if the information in the material is not consistent with or adequately supported by the prospectus or is not filed as part of the registration statement;

(C) using supplementary material not authorized by the issuer in connection with the offer of a particular security when a prospectus or other offering document required to be delivered in

connection with the offer specifically states that supplementary material is not authorized;

(18) failing to disclose that the broker-dealer or agent is affiliated with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security and, if the disclosure is made orally, failing to provide to the customer written disclosure before the completion of the transaction;

(19) failing to make a bona fide offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter or a selling group member or from an underwriting or a selling group member participating in the distribution as an underwriter or selling group member;

(20) failing or refusing to furnish to a customer, upon reasonable request, information to which the person is entitled or failing or refusing to respond to a formal written request, demand, or complaint;

(21) being found by a court or an administrative proceeding of competent jurisdiction to have violated the anti-fraud or registration provisions of federal securities laws or of the securities law of a state;

(22) marking an order ticket or confirmation as unsolicited when, in fact, the transaction was solicited;

(23) in connection with the solicitation of a sale or purchase of an over-the-counter non-NASDAQ security, failing to provide promptly the most current prospectus or the most recent periodic report filed under 15 U.S.C. 78m (Securities Exchange Act of 1934), when requested to do so by a customer;

(24) failing to provide to a customer for a month in which activity has occurred in a customer's account, but in no event less than every three months, a statement of account that contains a value for each over-the-counter non-NASDAQ equity security based on the closing market bid on a certain date; this paragraph applies only if the broker-dealer has been a market maker in that security at any time during the month in which the monthly or quarterly statement is issued;

(25) failing to maintain lists of persons who have informed the broker-dealer that the persons do not want to be solicited;

(26) conducting business by telephone at unreasonable times;

(27) failing to disclose to a person purchasing shares of an investment company on the premises of an insured depository institution that the investment is not covered by the Federal Deposit Insurance Corporation; or

(28) failing to comply with an applicable provision of the Conduct Rules of the National Association of Securities Dealers, Inc., or applicable fair practices or ethical standards adopted by the United States Securities and Exchange Commission or by a self-regulatory organization approved by the United States Securities and Exchange Commission.

**Sec. 45.55.027. Additional fraudulent, dishonest, and unethical business practices of agents.** In addition to the acts and practices described in AS 45.55.025, the acts and practices of an agent that constitute dishonest or unethical practices in the securities business under AS 45.55.060(a), that are grounds for imposition of administrative fines, censure, denial, suspension, revocation of a registration, or other appropriate disciplinary action, and that are



contrary to the high standards of commercial honor and just and equitable principles of trade to be observed by agents, include

- (1) engaging in the practice of lending to or borrowing money or securities from a customer or acting as a custodian for money, securities, or an executed stock power of a customer;
- (2) effecting securities transactions not recorded on the regular books and records of the broker-dealer that the agent represents unless the transactions are authorized in writing by the broker-dealer before execution of the transactions;
- (3) establishing or maintaining an account containing fictitious information in order to execute transactions that would otherwise be prohibited;
- (4) sharing directly or indirectly in profits and losses in the account of a customer without the written authorization of the customer and the broker-dealer that the agent represents;
- (5) dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase and sale of securities with a person who is not also registered in this state as an agent for the same broker-dealer or as a broker-dealer under direct or indirect common control of the broker-dealer or agent unless the person is not required to be registered in order to engage in the securities business in this state;
- (6) failing to disclose to a customer or prospective customer at the time of the first contact with the customer or prospective customer the name of the registered entity if different from the name under which the agent is doing business;
- (7) contacting a person who has requested to be placed on a list of persons who do not want to be contacted by the broker-dealer.

**Sec. 45.55.028. Practices of broker-dealers and agents considered fraudulent.** Acts and practices of broker-dealers or agents that are considered fraudulent or deceitful acts, practices, or courses of business under AS 45.55.010(a) include

- (1) entering into a transaction with a customer with regard to a security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission, markup, or profit;
- (2) contradicting or negating the importance of information contained in a prospectus or other offering material with the intent to deceive or mislead, or using an advertising or sales presentation in a deceptive or misleading manner, including using supplementary material that does not consistently reflect or is not supported by information presented in prospectus or offering material required to be delivered in connection with the offer;
- (3) in connection with the offer, sale, or purchase of a security, falsely misleading a customer to believe that the broker-dealer or agent possesses material, nonpublic information that would affect the value of the security;
- (4) in connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors with similar investment objectives for

some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor;

(5) failing to make a bona fide public offering in accordance with an underwriting agreement of all the securities allotted to a broker-dealer for distribution by using methods such as

(A) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that the securities will be returned to the broker-dealer or its nominees; or

(B) parking or withholding securities;

(6) with respect to transactions in securities sold in the over-the-counter market other than those securities listed in the NASDAQ National Market System,

(A) conducting sales contests in a particular security;

(B) failing or refusing to promptly execute sell orders after a solicited purchase by a customer;

(C) soliciting a secondary market transaction when there has not been a bona fide distribution in the primary issuer market;

(D) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security;

(7) effecting a transaction in or inducing the purchase or sale of a security by means of any manipulative, deceptive, or other fraudulent device or contrivance, including the use of boiler room tactics or the use of fictitious accounts; in this paragraph, "boiler room tactics" includes high-pressure sales tactics that have the effect of creating an artificially short period in which the investor must make a decision or that are designed to overcome a customer's reluctance to make an investment, including

(A) the use of intensive telephone campaigns or unsolicited calls to persons who are not known by or who do not have an account with the agent or broker-dealer and in which the person is encouraged to make a hasty decision to buy without regard to the person's investment needs and objectives;

(B) the use of scripts designed to meet the customer's objections;

(C) repeated phone calls;

(D) phone calls designed to entrap the customer;

(E) threatening tones on the telephone informing the customer that there is little time within which to make a decision;

(8) failing to comply with a prospectus delivery requirement adopted under federal law;

(9) making a false, misleading, deceptive, or exaggerated representation or prediction in the solicitation or sale of a security, including a statement that

(A) the security will be resold or repurchased;

(B) the security will be listed or traded on an exchange or established market;

(C) purchasing the security will result in an assured, immediate, or extensive increase in value, future market price, or return on investment; or

(D) refers to the issuer's financial condition, anticipated earnings, potential growth, or success;

(10) failing to disclose to a customer that the broker-dealer or agent is acting as an agent for both the customer and another person; or

(11) effecting a transaction on terms and conditions other than those stated by the confirmation.

Article 2. REGISTRATION OF BROKER-DEALERS,  
AGENTS, AND INVESTMENT ADVISERS

Section 30. Registration requirements.

35. Limited registration of Canadian broker-dealers  
and agents

40. Registration procedure.

50. Post-registration provisions.

60. Denial, revocation, suspension, cancellation,  
and withdrawal of registration.

**Sec. 45.55.030. Registration requirements.** (a) A person may not transact business in this state as a broker-dealer or agent unless the person is registered under this chapter.

(b) A broker-dealer or issuer may not employ an agent unless the agent is registered. The registration of an agent is not effective during a period when the agent is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make the person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

(c) A person may not transact business in this state as a state investment adviser or an investment adviser representative unless

(1) the person is registered as required under this chapter; or

(2) the person does not have a place of business in this state and

(A) the person's only clients in this state are investment companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940), other state investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than \$1,000,000, governmental agencies or instrumentalities whether acting for themselves or as trustees with investment control, or other institutional investors that are designated by regulation or order of the administrator; or

(B) during the preceding 12 months, the person has not had more than five clients who are residents of this state other than those specified in (A) of this paragraph; in this subparagraph, the number of the person's clients shall be determined under 17 C.F.R. 275.203(b)(3)-1 and 17 C.F.R. 275.222-2, as those regulations exist on or after the effective date of this Act.

(d) A registration or notice filing expires one year from its effective date unless renewed earlier.

(e) Except with respect to a federal covered adviser whose only clients are those described in (c)(2) of this section, a federal covered adviser may not conduct an investment advisory business in this state unless the federal covered adviser complies with AS 45.55.040(h).

(f) A person may not be registered concurrently as an agent of more than one broker-dealer or issuer. The administrator may waive this requirement if the administrator determines that it would not interfere with effective supervision of the agent by the broker-dealer or issuer and the waiver is in the public interest.

(g) A person who is registered or required to be registered as a state investment adviser under this chapter may not employ an investment adviser representative who provides advisory services in or emanating from this state unless the investment adviser representative is registered under this chapter or is exempt from registration, except that the registration of the investment adviser representative is effective only when the representative is employed by a state investment adviser registered under this chapter.

(h) A federal covered adviser who has filed notice under this chapter may not employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless the investment adviser representative is registered under this chapter or is exempt from registration, except that the registration of the investment adviser representative is effective only when the representative is employed by a federal covered adviser.

(i) If an investment adviser representative terminates employment with a state investment adviser or federal covered adviser, the state investment adviser or federal covered adviser shall promptly notify the administrator.

(j) A registered broker-dealer or agent is not considered to be soliciting, offering, or negotiating for the sale or selling advisory services if the registered broker-dealer or agent refers, as part of a wrap fee, asset allocation, or market-timing program, customers who are residents of this state to a state investment adviser or federal covered adviser that is registered or has made a notice filing in this state.

**Sec. 45.55.035. Limited registration of Canadian broker-dealers and agents.**

(a) If a broker-dealer is registered under this section and its principal office is located in a province or territory of Canada that provides at least equivalent registration for a broker-dealer that is resident in the United States, a broker-dealer that is resident in Canada and does not have an office or other physical presence in this state may effect transactions in securities with or for or induce or attempt to induce the purchase or sale of a security by a person from Canada who is

(1) temporarily resident in this state and with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(2) resident in this state and whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor.

(b) An agent who represents a Canadian broker-dealer registered under this section may, if the agent is registered under this section, effect transactions in securities in this state as permitted for the broker-dealer under (a) of this section.

(c) Subject to the requirements in (a) of this section, a Canadian broker-dealer may register under this section if the broker-dealer

(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

(2) files a written consent to service of process under AS 45.55.980(g);

(3) is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence of the registration; and

(4) is a member of a self-regulating organization or stock exchange in Canada.

(d) An agent may register under this section in order to effect transactions in securities in this state if the agent represents a Canadian broker-dealer that is registered under this section, and the agent

(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;

(2) files a written consent to service of process under AS 45.55.980(g); and

(3) is registered and files evidence of good standing in the jurisdiction from which the agent is effecting transactions into this state.

(e) Registration under this section becomes effective on the 30th day after an application is filed unless it is made effective earlier by the administrator or a denial order is in effect and a proceeding is pending under AS 45.55.060.

(f) A Canadian broker-dealer registered under this section shall

(1) maintain provincial or territorial registration and membership in good standing in a self-regulating organization or stock exchange;

(2) provide the administrator on request with books and records relating to its business in the state as a broker-dealer;

(3) inform the administrator promptly of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct; and

(4) disclose to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirements of this chapter.

(g) An agent of a Canadian broker-dealer registered under this section shall

(1) maintain provincial or territorial registration in good standing; and

(2) inform the administrator promptly of any criminal action taken against the agent or of any finding or sanction imposed on the broker-dealer or agent as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct.

(h) Renewal applications for Canadian broker-dealers and agents under this section must be filed before December 1 each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its principal office or, if a renewal application is not required, the most recent application filed under (c)(1) or (d)(1) of this section.

(i) An applicant for registration or renewal registration under this section shall pay the fee for broker-dealers and agents required by this chapter.

(j) A Canadian broker-dealer or agent registered under this section may not effect transactions in this state except

(1) as permitted under (a) or (b) of this section;

(2) with or through

(A) the issuers of the securities involved in the transactions;  
(B) other broker-dealers; or  
(C) banks, savings institutions, trust companies, insurance companies, investment companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(3) as otherwise permitted by this chapter.

(k) A Canadian broker-dealer or agent registered under this section and acting in accordance with the limitations in (j) of this section is exempt from all of the requirements of this chapter except the anti-fraud provisions under AS 45.55.010 and the requirements of this section. The registration of a Canadian broker-dealer or agent under this section may not be denied, suspended, or revoked except in accordance with the provisions of AS 45.55.060 for a breach of the anti-fraud provisions under AS 45.55.010 or the requirements of this section.

(l) In this section, "Canadian broker-dealer" means a broker-dealer that has its principal office in a province or territory of Canada.

**Sec. 45.55.040. Registration procedure.** (a) A broker-dealer, agent, investment adviser representative, or state investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process under AS 45.55.980(g). The application must contain whatever information the administrator by regulation may require concerning such matters as

(1) the applicant's form and place of organization;

(2) the applicant's proposed method of doing business;

(3) the qualifications and business history of the applicant; in the case of a broker-dealer or state investment adviser, the qualifications and business history of a partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or state investment adviser;

(4) an injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) the applicant's financial condition and history; and

(6) if the applicant is a state investment adviser, any information to be furnished or disseminated to a client or prospective client.

(b) The administrator may by regulation or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state.

c) A broker-dealer, an agent, an investment adviser representative, and a state investment adviser applicant for initial or renewal registration shall pay a registration fee established by the department by regulation. A person acting as a federal covered adviser in this state shall pay a fee for an initial and renewal notice filing under (h) of this section as required by the administrator by regulation.

(d) A registered broker-dealer, state investment adviser, or a federal covered adviser who has filed notice under this chapter may file an application

for registration or notice filing, as applicable, of a successor for the unexpired portion of the year regardless of whether the successor is then in existence. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of AS 45.55.030(b) have been met. A state investment adviser may file an application to transfer from a predecessor state investment adviser or federal covered adviser the investment adviser representative's unexpired portion of the registration. The department shall establish by regulation the filing fee for filing applications under this subsection.

(e) The administrator may by regulation or order require a minimum level of capitalization for registered broker-dealers, subject to the limitations of 15 U.S.C. 78o (Securities Exchange Act of 1934), and establish minimum financial requirements for state investment advisers, subject to the limitations of 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The financial requirements may differ for those state investment advisers who have discretionary authority over or maintain custody of clients' funds or securities and those who do not.

(f) The administrator may by regulation or order require registered broker-dealers and agents to post a bond in an amount the administrator may prescribe subject to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The administrator may determine the conditions of the bond. The administrator shall accept any appropriate deposit of cash or securities from a registered broker-dealer or agent in place of a required bond. A bond may not be required of a registrant whose net capital exceeds the amounts required by the administrator. A bond must provide for suit on it by a person who has a cause of action under AS 45.55.930 and, if required by the administrator by regulation, by a person who has a cause of action not arising under this chapter. A bond must provide that a suit may not be maintained to enforce a liability on the bond unless brought within three years after the sale or other act on which it is based.

(g) The administrator may permit initial and renewal registration and notice filings required for state investment advisers, federal covered advisers, investment adviser representatives, broker-dealers, and agents under this chapter to be filed with the United States Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authority. The administrator may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states, including participation in joint, coordinated securities examinations with other states.

(h) Except with respect to federal covered advisers whose only clients are those described in AS 45.55.030(c)(2), before acting as a federal covered adviser in this state, a federal covered adviser shall file with the administrator those documents that have been filed with the United States Securities and Exchange Commission as the administrator, by regulation, by order, or otherwise, may require.

(i) The administrator shall by regulation or order specify procedures, fees, and an effective date for registrations, notice filings under this section, transfers of agents, and other registrations or notice filings allowed or required under this chapter.



(j) The administrator may by regulation or order require registered state investment advisers who have custody of or discretionary authority over clients' funds or securities to post a bond in an amount the administrator may establish subject to the limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The administrator may determine the conditions of the bond. The administrator shall accept any appropriate deposit of cash or securities in place of a required bond. A bond may not be required of a registered state investment adviser whose minimum financial condition, which may be defined by regulation, or net capital exceeds the amounts required by the administrator. A bond must provide for suit on it by a person who has a cause of action under AS 45.55.930 and, if required by the administrator by regulation, by a person who has a cause of action not arising under this chapter. A bond must provide that a suit may not be maintained to enforce a liability on the bond unless brought within three years after the sale or other act on which it is based.

**Sec. 45.55.050. Post-registration provisions.** (a) Except as provided under 15 U.S.C. 78o (Securities Exchange Act of 1934) a registered broker-dealer shall make and keep the accounts, correspondence, memoranda, papers, books, and other records that the administrator requires by regulation or order. All required records shall be preserved for three years unless the administrator by regulation prescribes otherwise.

(b) Subject to 15 U.S.C. 78o (Securities Exchange Act of 1934), a registered broker-dealer shall file the financial reports the administrator requires.

(c) If the information contained in a document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the federal covered adviser, state investment adviser, broker-dealer, agent, or investment adviser representative who made the filing shall promptly file a correcting amendment unless notification of the correction is given under AS 45.55.030(b). If the document is filed with respect to a federal covered adviser, the amendment shall be filed when it is required to be filed with the United States Securities and Exchange Commission unless notification of the correction is given under AS 45.55.030(b).

(d) All the records referred to in this section are subject at any time to reasonable periodic, special, or other examinations by representatives of the administrator, inside or outside this state, as the administrator considers necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as the administrator considers it practicable in administering this subsection, may cooperate with the securities administrators of other states, the United States Securities and Exchange Commission, and any national securities exchange or national securities association registered under 15 U.S.C. 78a – 78lll (Securities Exchange Act of 1934)

(e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an investment adviser representative or state investment adviser shall make and keep the accounts, correspondence, memoranda, papers, books, and other records that the administrator requires by regulation or order. All required records shall be preserved for three years unless the administrator by regulation prescribes otherwise.

(f) The administrator may by regulation or order require that certain information be furnished or disseminated by persons registered or required to be registered as state investment advisers as necessary or appropriate in the public interest or for the protection of investors and advisory clients. The administrator may determine that certain information may be used in whole or partial satisfaction of this requirement if the information complies with 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) and the rules adopted under that act.

(g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state investment adviser shall file the financial reports the administrator requires by regulation or order.

(h) A state investment adviser that has its principal place of business in a state other than this state and the investment adviser representatives of that state investment adviser are exempt from the requirements of (e) of this section if the state investment adviser is registered as an investment adviser in the state where the state investment adviser has its principal place of business and is in compliance with that state's requirements relating to accounts and records.

(i) A broker-dealer and an agent of a broker-dealer shall file with the administrator only the financial reports or other information required to be filed with the United States Securities and Exchange Commission under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934).

(j) A state investment adviser that has its principal place of business in a state other than this state and the investment adviser representatives of that state investment adviser shall file with the administrator only the financial reports or other information required by the state in which the state investment adviser maintains its principal place of business if the state investment adviser is licensed in that state and is in compliance with that state's reporting requirements.

(k) A broker-dealer shall comply with the supervision requirements set out in Conduct Rule 3010 of the National Association of Securities Dealers, Inc.

**Sec. 45.55.060. Denial, revocation, suspension, cancellation, and**

**withdrawal of registration.** (a) The administrator may by order deny, suspend, or revoke a registration if the administrator finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or state investment adviser, a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or state investment adviser

(1) has filed an application for registration that, as of its effective date, or as of a date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) has wilfully or repeatedly violated or failed to comply with a provision of this chapter or a regulation or order under this chapter;

(3) has been convicted, within the past 10 years, of a misdemeanor involving a security or an aspect of the securities business or a felony; in this paragraph, "convicted" includes a finding of guilt based on a verdict, judgment, plea of guilty, or plea of nolo contendere, if the verdict, judgment, or plea has not

been reversed, set aside, or withdrawn, regardless of whether sentence has been imposed;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing conduct or a practice involving an aspect of the securities business;

(5) is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, state investment adviser, or investment adviser representative;

(6) is the subject of an order entered within the past five years by the securities administrator of another state or by the United States Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent, state investment adviser, investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the United States Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the 15 U.S.C. 78a – 78lll (Securities Exchange Act of 1934), or is the subject of a United States Postal Service fraud order; but the administrator may not

(A) institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on; and

(B) enter an order under this paragraph on the basis of an order under another state act unless that order was based on facts that would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices or conduct in the securities or investment advisory business;

(8) is insolvent, in the sense that liabilities exceed assets, that obligations cannot be met as they mature, or that the business cannot be continued safely for the customers of the applicant or registrant, but the administrator may not enter an order against a broker-dealer or state investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or state investment adviser;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in (d) of this section;

(10) has failed to comply with the requirements of AS 45.55.050 to make, keep, or produce records required by the administrator, or to file financial reports or other information the administrator by regulation or order may require; or

(11) is a person whose license renewal is denied under AS 14.43.148 or whose license issuance or renewal is denied under AS 25.27.244.

(b) The administrator may by order deny, suspend, or revoke any registration if the administrator finds that the order is in the public interest and that the applicant or registrant

(1) has failed reasonably to supervise agents if the applicant or registrant is a broker-dealer, or has failed to supervise employees and investment adviser representatives if the applicant or registrant is a state investment adviser; or

(2) has failed to pay the proper filing fee; but the administrator may enter only a denial order under this paragraph, and the administrator shall vacate the order when the deficiency is corrected.

(c) The administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the administrator when registration became effective unless the proceeding is instituted within the next 30 days.

(d) The following provisions govern the application of (a)(9) of this section:

(1) the administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other than

(A) the broker-dealer if the broker-dealer is an individual; or

(B) an agent of the broker-dealer;

(2) the administrator may not enter an order against a state investment adviser on the basis of the lack of qualification of a person other than

(A) the state investment adviser if the state investment adviser is an individual; or

(B) an investment adviser representative who represents the state investment adviser in doing any of the acts that make the state investment adviser a state investment adviser;

(3) the administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;

(4) the administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;

(5) the administrator shall consider that a state investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent; if the administrator finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as a state investment adviser, the administrator may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in this state as a state investment adviser;

(6) the administrator may by regulation provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, including applicants for registration as investment adviser representatives; however, examinations required by this paragraph are not required of a registrant under this chapter who was doing business in this state and was a resident of this state on May 9, 1959.

(e) The administrator may by order summarily postpone or suspend registration pending final determination of a proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, and the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons for it and that within 15 days after the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is

requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(f) If the administrator finds that a registrant or applicant for registration no longer exists or has ceased to do business as a broker-dealer, agent, state investment adviser, or investment adviser representative, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

(g) Withdrawal from registration as a broker-dealer, agent, state investment adviser, or investment adviser representative becomes effective 30 days after receipt of an application to withdraw or within a shorter period of time as the administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions as the administrator by order determines. If a proceeding is not pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under (a)(2) of this section within one year after withdrawal is effective and enter a revocation or suspension order as of the last date on which registration was effective.

(h) An order may not be entered under any part of this section except the first sentence of (e) of this section without (1) appropriate prior notice to the applicant or registrant as well as the employer or prospective employer if the applicant or registrant is an agent, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law. To the extent AS 44.62 (Administrative Procedure Act) is not in conflict herewith, it applies to all procedures.

### Article 3. REGISTRATION OF SECURITIES

#### Section 70. Registration requirement.

75. Federal Covered Securities

80. Registration by notification.

90. Registration by coordination.

100. Registration by qualification.

110. Provisions applicable to registration generally.

120. Denial, suspension, and revocation of registration.

**Sec. 45.55.070. Registration requirement.** A person may not offer or sell a security in this state unless

- (1) it is registered under this chapter;
- (2) the security or transaction is exempted under AS 45.55.900, or
- (3) it is a federal covered security.

**Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt under AS 45.55.900, a security that is a federal covered security under 15 U.S.C. 77r(b)(2), as amended (Securities Act of 1933), may only be offered for sale and sold into, from, or within the state upon the administrator's receipt of

(1) a copy of the registration statement filed by the issuer with the United States Securities and Exchange Commission, or in place of the registration statement, the Uniform Investment Company Notice Filing Form adopted by North American Securities Administrators Association, Inc., or a similar notice filing form;

(2) a consent to service of process signed by the issuer; and

(3) a notice filing fee as prescribed by the administrator for a notice filing under this section and, if necessary to compute the fee, a report of the value of the federal covered securities offered or sold in this state.

(b) A notice filing under this section may be renewed by filing, before the expiration of an effective notice filing, a renewal notice and filing fee as prescribed by the administrator, and, if necessary to compute the fee, a report of the value of the federal covered securities offered or sold in this state. A renewal notice filing is effective on the expiration date of the previous notice filing.

(c) A notice filing under this section may be amended as provided by the administrator by regulation or order. A notice filing may be terminated by an issuer upon providing the administrator with notice of the termination.

(d) With respect to a security that is a covered security under 15 U.S.C. 77r(b)(4)(D), as amended (Securities Act of 1933), the administrator, by regulation or order, may require the issuer to file a notice on United States Securities and Exchange Commission's Form D and a consent to service of process signed by the issuer no later than 15 days after the first sale of a covered security in this state and a fee established by the administrator for a notice filing under this section.

(e) The administrator, by regulation or order, may require the filing of any document filed with the United States Securities and Exchange Commission under 15 U.S.C. 77a - 77bbbb, as amended (Securities Act of 1933), with respect

to a covered security under 15 U.S.C. 77r(b)(3) or (4), as amended (Securities Act of 1933).

(f) The administrator may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under 15 U.S.C. 77r(b)(1), as amended (Securities Act of 1933), if the administrator finds that

(1) the order is in the public interest; and

(2) there is a failure to comply with a condition established under this section. The administrator, by regulation or order, may waive any or all of the provisions of this section.

(g) The administrator, by regulation or order, may waive any or all of the provisions of this section.

**Sec. 45.55.080. Registration by notification.** (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under AS 45.55.090:

(1) a security whose issuer and predecessors have been in continuous operation for at least five years if

(A) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on a security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision; and

(B) the issuer and predecessor during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices

(i) that are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent of the amount of these outstanding securities as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price;

(ii) that, if the issuer and predecessors have not had any security of the type specified in (i) of this subparagraph outstanding for three full fiscal years, equal at least five percent of the amount, as measured in (i) of this subparagraph, of all securities that will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued;

(2) a security, other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease, registered for nonissuer distribution if

(A) any security of the same class has ever been registered under this chapter; or

(B) the security being registered was originally issued under an exemption under this chapter.

(b) A registration statement under this section must contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.980(g):

(1) a statement demonstrating eligibility for registration by notification;

(2) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction; the date of its organization; and the general character and location of its business;

(3) with respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; and a statement of the reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in AS 45.55.100(b)(8), (10), and (12); and

(6) in the case of registration under (a)(2) of this section which does not also satisfy the conditions of (a)(1) of this section, a balance sheet of the issuer as of a date within four months before the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and predecessor's existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under AS 45.55.120, a registration statement under this section automatically becomes effective at three o'clock Alaska Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at an earlier time as the administrator determines.

**Sec. 45.55.090. Registration by coordination.** (a) A security for which a registration statement has been filed under the Securities Act of 1933 or any security for which filing has been made under Regulations A, E, and F pursuant to subsection (b) of sec. 3 of the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section must contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.980(g):

(1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a – 77bbbb (Securities Act of 1933);

(2) if the administrator requires, copies of the articles of incorporation and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement with or among underwriters; a copy of an indenture or other instrument governing the issuance of the security to be registered; and a specimen or copy of the security;



(3) if the administrator requests, any other information, or copies of any other documents, filed under 15 U.S.C. 77a – 77b (Securities Act of 1933); and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the United States Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) no stop order is in effect and no proceeding is pending under AS 45.55.120;

(2) the registration statement has been on file with the administrator for at least 10 days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter period which the administrator permits and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection and subsection (c) of this section if the administrator promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when the administrator notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection and subsection (c) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The administrator may by regulation or otherwise waive either or both of the conditions specified in (c)(2) and (3) of this section. If the federal registration statement becomes effective before all the conditions in this subsection and subsection (c) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether the administrator then contemplates the institution of a proceeding under AS 45.55.120; but this advice by the administrator does not preclude the institution of the proceeding at any time.

**Sec. 45.55.100. Registration by qualification.** (a) A security may be registered by qualification.

(b) A registration statement under this section must contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.980(g):

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intent to subscribe; and a description of a material interest in a material transaction with the issuer or a significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by (2) of this subsection: the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(4) with respect to a person owning of record, or beneficiary if known, 10 per cent or more of the outstanding shares of any class of equity security of the issuer: the information specified in (2) of this subsection other than the person's occupation;

(5) with respect to every promoter if the issuer was organized within the past three years: the information specified in (2) of this subsection, an amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of a material interest in a material transaction with the issuer or a significant subsidiary effected within the past three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and a significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for which the issuer

or a subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation from this at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of that person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of the agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered other than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of persons who have received commissions in connection with the acquisition, and the amounts of the commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of a stock option or other security options outstanding, or to be created in connection with the offering, together with the amount of the options held or to be held by every person required to be named in (2), (4), (5), (6), or (8) of this subsection and by a person who holds or will hold 10 per cent or more in the aggregate of the options;

(11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including the litigation or proceeding known to be contemplated by governmental authorities;

(12) a copy of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date, to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents,

as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, that states whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than a public and official document or statement, that is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a profit and loss statement and analysis or surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and a predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements which would be required if that business were the registrant; and

(17) the additional information that the administrator requires by regulation or order.

(c) A registration statement under this section becomes effective when the administrator so orders.

(d) The administrator may by regulation or order require as a condition of registration under this section that a prospectus containing a designated part of the information specified in (b) of this section be sent or given to each person to whom an offer is made before or concurrently with whichever of the following occurs first:

(1) the first written offer made to the person, otherwise than by means of a public advertisement, by or for the account of the issuer or any other person on whose behalf the offering is being made, or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of any such person;

(3) payment under the sale; or

(4) delivery of the security under the sale.

**Sec. 45.55.110. Provisions applicable to registration generally.** (a) A registration statement or a notice filing under AS 45.55.075 may be filed by the issuer, another person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) A person filing a registration statement or a notice filing under AS 45.55.075 shall pay a filing fee and a registration or notice filing fee in amounts established by the department by regulation. If a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under AS 45.55.120, the administrator shall retain the filing fee. If a notice filing is

withdrawn before the effective date, the administrator shall retain the notice filing fee.

(c) A registration statement must specify

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and

(3) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the United States Securities and Exchange Commission.

(d) A document filed under this chapter within five years preceding the filing of a registration statement or a notice filing under AS 45.55.075 may be incorporated by reference in the registration statement or notice filing to the extent that the document is currently accurate.

(e) The administrator may by regulation or order permit the omission of an item of information or document from a registration statement or a notice filing under AS 45.55.075.

(f) In the case of a nonissuer distribution, information may not be required under AS 45.55.100 or (j) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The administrator may by regulation or order require as a condition of registration by qualification or coordination that a security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow, and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by regulation or order determine the conditions of an escrow or impounding required in this subsection but the administrator may not reject a depository solely because of location in another state.

(h) The administrator may by regulation or order require as a condition of registration that a security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the administrator or preserved for any period up to three years specified in the regulation or order.

(i) A notice filing under AS 45.55.075 is effective on receipt by the administrator. A registration statement or a notice filing under AS 45.55.075 is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by the underwriter or broker-dealer as a participant in the distribution, except during the time a stop order is in effect under AS 45.55.120. The administrator may establish a different expiration date for purposes of coordination with a national registration or notice filing system. The administrator may by regulation provide for an automatic extension for one additional year of the effective date for notice filings under AS 45.55.075 if the extended expiration date is set at the same time the notice filing is made effective

and the notice filing fee reflects the extension. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction if the registration statement is effective and between the thirtieth day after the entry of a stop order suspending or revoking the effectiveness of the registration statement under AS 45.55.120, if the registration statement did not relate in whole or in part to a nonissuer distribution, and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

(j) So long as a registration statement is effective, the administrator may by regulation or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A notice filing under AS 45.55.075 relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in 15 U.S.C. 80a-1 – 80a-64 (Investment Company Act of 1940), may be amended after its effective date so as to increase the securities specified as proposed to be offered if the notice filing was for a specified dollar amount of securities to be offered in this state and if the total fees were based on the dollar amount of securities to be offered. An amendment becomes effective when the administrator so orders. A person filing an amendment shall pay a fee, calculated in the manner specified in (b) of this section, with respect to the additional securities proposed to be offered.

**Sec. 45.55.120. Denial, suspension, and revocation of registration.** (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that

(1) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under AS 45.55.110(k) as of its effective date, or any report under AS 45.55.110(j) is incomplete in a material respect or contains a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) a provision of this chapter or a regulation, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering, by

(A) the person filing the registration statement;

(B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(C) any underwriter;

(3) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction under another federal or state act applicable to the offering; but the administrator may not

(A) institute a proceeding against an effective registration statement under this paragraph more than one year from the date of the order or injunction relied on; or

(B) enter an order under this paragraph on the basis of an order or injunction entered under another state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;

(5) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts of kinds of options;

(7) when a security is sought to be registered by notification, it is not eligible for that registration;

(8) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by AS 45.55.090(b)(4); or

(9) the applicant or registrant has failed to pay the proper filing fee; but the administrator may enter only a denial order under this paragraph and the administrator shall vacate the order when the deficiency is corrected.

(b) The administrator may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within the next 30 days.

(c) The administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of a proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in (d) of this section that it has been entered and of the reasons for it and that within 15 days after the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in (d) of this section, may modify or vacate the order or extend it until final determination.

(d) A stop order may not be entered under any part of this section except the first sentence of (c) of this section without

(1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) opportunity for hearing; and

(3) written findings of fact and conclusions of law.

(e) The administrator may vacate or modify a stop order if the administrator finds that the conditions that prompted entry have changed or that it is otherwise in the public interest to do so.



#### Article 4. MISCELLANEOUS PROVISIONS

##### Section 138. Application to Alaska Native Claims Settlement Act corporations.

139. Reports of corporations.

140. [Renumbered].

150. Sales and advertising literature.

160. Misleading filings.

170. Unlawful representations concerning registration or exemption.

**Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations.** The initial issue of stock of a corporation organized under Alaska law pursuant to 43 U.S.C. 1601 - 1628 (Alaska Native Claims Settlement Act) is not a sale of a security under AS 45.55.070 and 45.55.130(10).

**Sec. 45.55.139. Reports of corporations.** A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation that has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with its distribution to shareholders.

**Sec. 45.55.150. Sales and advertising literature.** The administrator may by regulation or order establish requirements for or require the filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, clients, or prospective clients by an issuer, a state investment adviser, a federal covered adviser, or a broker-dealer, unless

(1) the security or transaction is exempt under AS 45.55.900 and the applicable provision of that section does not place a limitation on sales and advertising literature;

(2) the security is a federal covered security; or

(3) the broker-dealer, state investment adviser, or federal covered adviser is exempt or excluded from the requirements of this section under this chapter or federal law.

**AS 45.55.155. Viatical settlement interests.** (a) Before the sale of a viatical settlement interest, an issuer shall provide a prospective buyer with information that is sufficient to make an informed investment decision. The issuer shall also provide the information to the administrator upon request if the issuer is not otherwise required to file the information with the administrator. In this subsection, "information that is sufficient to make an informed investment decision" includes state-mandated disclosure forms and a disclosure of any significant factors that may affect the outcome of the investment.

(b) Except as may be required in the course of conduct of the responsibilities of the Department of Community and Economic Development, an

issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest. The viator may waive this prohibition against disclosure if the waiver is in writing and signed by the viator.

**Sec. 45.55.160. Misleading filings.** A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

**Sec. 45.55.170. Unlawful representations concerning registration or exemption.** (a) Neither the fact that an application for registration under AS 45.55.030 - 45.55.060, a registration statement under AS 45.55.070 - 45.55.120, or a notice filing under AS 45.55.040(h) or 45.55.075 is filed nor the fact that a person or security is effectively registered constitutes a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. Neither the fact of filing nor the fact that an exemption or exception is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(b) A person may not make, or cause to be made, to a prospective purchaser, customer, or client any representation inconsistent with (a) of this section.

Article 5. GENERAL PROVISIONS

Section 995. Short title. Section

900. Exemptions.

905. Administration of chapter.

910. Investigations and subpoenas.

915. Reimbursement of expenses incident to  
examination or investigation.

920. Orders, injunctions, and civil penalties.

925. Criminal penalties.

930. Civil liability to buyers.

935. Hearings.

940. Judicial review of orders.

950. Regulations, forms, orders, and hearings.

960. Administrative Procedure Act applies.

970. Administrative files and opinions.

980. Applicability of the chapter; service of  
process.

990. Definitions.

**Sec. 45.55.900. Exemptions.** (a) The following securities are exempted from AS 45.55.070 and 45.55.075:

(1) a security, including a revenue obligation, issued or guaranteed by the United States or a territory of the United States, the District of Columbia, a state, a political subdivision of a state or territory, or an agency or corporate or other instrumentality of one or more of the entities described in this paragraph; or a certificate of deposit for one or more of the entities described in this paragraph

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the entities described in this paragraph, or a foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued or guaranteed by a bank organized under the laws of the United States, or by a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States, or a security issued by or representing an interest in or a direct obligation of a federal reserve bank;

(4) a commercial paper, note, draft, bill of exchange, or banker's acceptance that arises out of a current transaction or the proceeds of which have been or are to be used for current transactions and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or a renewal of the paper that is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper, note, draft, bill of exchange, or banker's acceptance is of the type eligible for discount by a federal reserve bank;

(5) a security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar employee's benefit plan, or a security issued by or an interest or participation in a church plan, company, or

account that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(14) (Investment Company Act of 1940);

(6) a security issued by and representing an interest in or a debt of, or guaranteed by, a federal savings and loan association, or a building and loan or similar association organized under the laws of a state and authorized to do business in this state;

(7) a security issued by and representing an interest in or a debt of, or guaranteed by, an insurance company organized under the laws of a state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities; except that policies or annuity contracts of insurance companies admitted to do business in the state are not subject to this chapter;

(8) a security issued or guaranteed by a federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(9) a security issued or guaranteed by a railroad, other common carrier, public utility, or holding company that is

(A) subject to the jurisdiction of the Interstate Commerce Commission or its successor;

(B) a registered holding company under 15 U.S.C. 79 - 79z-6 (Public Utility Holding Company Act of 1935) or a subsidiary of the company within the meaning of 15 U.S.C. 79 - 79z-6;

(C) regulated in respect of its rates and charges by a governmental authority of the United States or a state; or

(D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province;

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, the Pacific Coast Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board of Options Exchange, or another securities exchange designated by order of the administrator, or any security designated or approved for designation upon notice of issuance as a national market system security on the National Association of Securities Dealers Automated Quotation National Market System or on any other quotation system designated by order of the administrator, or any other security of the same issuer that is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to an entity described in this paragraph;

(11) a security issued by a person organized and operated not for pecuniary profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes or as a chamber of commerce or trade or professional association, or a security of a fund that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B) (Investment Company Act of 1940);

(12) shares of membership stock in the Alaska Commercial Fishing and Agriculture Bank, and other securities issued by that bank to members or in connection with loans to members;

(13) an equity security issued in connection with the acquisition by a holding company of a bank under 12 U.S.C. 1842(a) (Bank Holding Company Act of 1956) or a savings association, as defined in 12 U.S.C. 1813(b) (Federal Deposit Insurance Act) and the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. 1467(e) (Home Owners' Loan Act) if

(A) the acquisition occurs solely as part of a reorganization in which security holders exchange their shares of a bank or savings association for shares of a newly formed holding company with no significant assets other than securities of the bank or savings association and the existing subsidiaries of the bank or savings association;

(B) the security holders receive after the reorganization substantially the same proportional interests in the holding company as they held in the bank or savings association except for nominal changes in shareholders' interests resulting from lawful elimination of fractional interests and the exercise of dissenting shareholders' rights under state or federal law;

(C) the rights and interests of security holders in the holding company are substantially the same as those in the bank or savings association before the transaction except as may be required by law; and

(D) the holding company has substantially the same assets and liabilities on a consolidated basis as the bank or savings association before the transaction.

(b) The following transactions are exempted from AS 45.55.070 and 45.55.075:

(1) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(2) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness, secured under those documents is offered and sold as a unit;

(3) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) sales by an issuer

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months, regardless of whether the seller or any of the buyers is then present in this state if

(i) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iii) offers are made without public solicitation or advertisement; and

(iv) the issuer files with the administrator a notice specifying the issuer, the security to be sold, and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months regardless of whether the seller or any of the buyers is then present in this state if

(i) the sales are made solely in this state;

(ii) before a sale, each prospective buyer is furnished information that is sufficient to make an informed investment decision, which information shall be furnished to the administrator upon request; in this subparagraph, "information that is sufficient to make an informed investment decision" includes a business plan, an income and expense statement, a balance sheet, a statement of risks, and a disclosure of any significant negative factors that may affect the outcome of the investment;

(iii) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under AS 45.55.040;

(iv) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(v) the issuer obtains a signed agreement from the buyer acknowledging that the buyer is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vi) offers are made without public solicitation or advertisement; and

(vii) the issuer files with the administrator a notice specifying the issuer, the security to be sold, and the terms of the offer at least two days before any sales are made;

(C) to no more than 10 persons who are to receive the initial issue of shares of a nonpublicly traded corporation, limited liability company, limited partnership, or limited liability partnership if the requirements of (B)(ii) - (iv), and (vi) of this paragraph are met;

(D) to the buyer of an enterprise or a business and the assets and liabilities of the enterprise or business if

- (i) the transfer of stock to the buyer is solely incidental to the sale of the enterprise or business and its assets and liabilities;
  - (ii) the seller provides full access to the buyer of the books and records of the enterprise or business; and
  - (iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;
- (6) an offer or sale of a preorganization certificate or subscription if
- (A) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;
  - (B) the number of subscribers does not exceed 10; and
  - (C) a payment is not made by any subscriber;
- (7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if
- (A) a commission or other remuneration, other than a standby commission, is not paid or given directly or indirectly for soliciting a security holder in this state; or
  - (B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;
- (8) an offer, but not a sale, of a security for which registration statements have been filed under both this chapter and 15 U.S.C. 77a - 77b (Securities Act of 1933) if a stop order or refusal order is not in effect and a public proceeding or examination looking toward an order is not pending under either this chapter or 15 U.S.C. 77a - 77b (Securities Act of 1933);
- (9) an isolated nonissuer transaction, regardless of whether effected through a broker-dealer, if the seller is not a promoter or controlling person as the administrator may define by regulation or order or if the administrator at the request of the seller waives the requirement that the seller not be a promoter or controlling person;
- (10) a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by regulation require that the customer acknowledge on a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;
- (11) a transaction executed by a bona fide pledgee without intending to evade this chapter;
- (12) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (13) a stock dividend, regardless of whether the corporation distributing the dividend is the issuer of the stock, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or

property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(14) an act incident to a statutory vote by security holders, on a merger, consolidation, reclassification of securities, or sale of assets in consideration of the issuance of securities of another issuer;

(15) the offer or sale by a registered broker-dealer, acting either as principal or agent, of securities previously sold and distributed to the public if the securities

(A) are sold at prices reasonably related to the current market price at the time of sale, and, if the broker-dealer is acting as agent, the commission collected by the broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(B) do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by an underwriter, or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) have been lawfully sold and distributed in this state under this chapter;

(16) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles, or leases, or in payments out of production under such rights, titles, or leases, if the purchasers

(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by AS 45.55.070;

(17) a nonissuer transaction by a registered agent of a registered broker-dealer, and a resale transaction by a sponsor of a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a security of a class that has been outstanding in the hands of the public for at least 90 days if, at the time of the transaction,

(A) the issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(B) the security is sold at a price reasonably related to the current market price of the security;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(D) a nationally recognized securities manual, which may be designated by rule or order of the administrator, or a document filed with



the United States Securities and Exchange Commission that is publicly available through the United States Securities and Exchange Commission's electronic data gathering and retrieval system, contains

- (i) a description of the business and operations of the issuer;

- (ii) the names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

- (iii) an audited balance sheet of the issuer as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had that audited balance sheet, a pro forma balance sheet; and

- (iv) an audited income statement for each of the issuer's immediately preceding two fiscal years or for the period of existence of the issuer if the issuer has been in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had that audited income statement, a pro forma income statement; and

- (E) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security

- (i) is a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);

- (ii) including predecessors, has been engaged in continuous business for a least three years; or

- (iii) has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months or, in the case of a reorganization or merger where parties to the reorganization or merger had that balance sheet, a pro forma balance sheet;

- (18) an offer or a sale of a security by an issuer that has a specific business plan or purpose, is not in the development stage, and has not indicated that its business plan is to engage in a merger or acquisition with an unidentified company or other entity or person, under the following conditions:

- (A) sales of securities are made only to persons who are or the issuer reasonably believes are accredited investors as defined in 17 C.F.R. 230.501(a), as that regulation exists on or after the effective date of this act;

- (B) the issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security; a resale of a security sold in reliance on this exemption within 12 months of sale is presumed to be with a view to distribution and not for investment, except a resale under a registration statement under AS 45.55.070 - 45.55.120 or to an accredited investor under an exemption available under this chapter;

(C) the exemption in this paragraph is not available to an issuer if the issuer, a predecessor of the issuer, an affiliated issuer, a director, an officer, or a general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, or a partner, a director, or an officer of the underwriter

(i) within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by a state securities administrator or the United States Securities and Exchange Commission;

(ii) within the last five years has been convicted of a criminal offense in connection with the offer, purchase, or sale of a security, of a criminal offense involving fraud or deceit, or of a felony;

(iii) is currently subject to a state or federal administrative enforcement order or judgment entered within the last five years finding fraud or deceit in connection with the purchase or sale of a security; or

(iv) is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security;

(D) the nonavailability of the exemption under (C) of this paragraph does not apply if

(i) the person subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment, or decree creating the disqualification was entered against the person;

(ii) before the first offer under this exemption, the state securities administrator or the court or regulatory authority that entered the order, judgment, or decree waives the disqualification; or

(iii) the issuer establishes that it did not know and, in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;

(E) a general announcement of the proposed offering may be made by any means and may include only the following information unless the administrator specifically permits additional information:

(i) the name, address, and telephone number of the issuer of the security;

(ii) the name, a brief description, and the price, if known, of the security to be issued;

(iii) a brief description in 25 words or less of the business of the issuer;

- (iv) the type, number, and aggregate amount of securities being offered;
- (v) the name, address, and telephone number of the person to contact for additional information;
- (vi) a statement that sales will be made only to accredited investors;
- (vii) a statement that money or other consideration is not being solicited or will not be accepted by way of this general announcement; and
- (viii) a statement that the securities have not been registered with or approved by a state securities agency or the United States Securities and Exchange Commission and are being offered and sold under an exemption from registration;

(F) the issuer in connection with any offer may provide information in addition to the general announcement under (E) of this paragraph if the information is delivered

- (i) through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
- (ii) to a prospective purchaser that the issuer reasonably believes is an accredited investor;

(G) a telephone solicitation is not permitted unless, before placing the call, the issuer reasonably believes that the prospective purchaser being solicited is an accredited investor;

(H) dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming this exemption;

(I) the issuer shall file a notice of the transaction with the administrator, a copy of the general announcement, and the fee for exemption filings established by regulation within 15 days after the first sale in this state;

(19) an offer to repay, under AS 45.55.930, the buyer of a security if the offeror first files with the administrator a notice specifying the terms of the offer at least two days before the offer is made;

(20) a transaction involving only family members who are related, including related by adoption, within the fourth degree of affinity or consanguinity, or involving only those family members and the corporations, partnerships, limited liability companies, limited partnerships, limited liability partnerships, associations, joint-stock companies, or trusts that are organized, formed, or created by those family members or at the direction of those family members.

(c) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) The administrator may by order deny or revoke an exemption specified in (a)(5), (7) or (11) of this section or in (b) of this section with respect to a specific security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final

determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(e) An order under (d) of this section may not operate retroactively. A person may not be considered to have violated AS 45.55.070 or 45.55.150 by reason of an offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known of the order.

(f) The administrator shall by regulation prescribe a schedule of fees for the application for or the examination or investigation of a claimed exemption.

(g) An offer on the Internet by an issuer is exempt from the registration provisions of AS 45.55.070 and the advertising regulations adopted under this chapter and does not preclude the issuer from relying on other available exemptions for offers provided under this chapter if

(1) the offer directly discloses, in a format and at a prominent place in the offer and in an advertisement of the offer on the Internet, that the securities are not being offered to persons in this state;

(2) the offer is not otherwise specifically directed to a person in this state by or on behalf of the issuer; and

(3) a sale of the issuer's securities is not made in this state as a result of the offer.

(h) For any security or transaction or any type of security or transaction, the administrator may by order waive, withdraw, or modify any of the requirements or conditions of (b)(5) of this section.

**Sec. 45.55.905. Administration of chapter.** (a) The Department of Community and Economic Development shall administer this chapter.

(b) The administrator or an officer or employee of the administrator may not use for personal benefit information that is filed with or obtained by the administrator and that is not made public. No provision of this chapter authorizes the administrator or an officer or employee of the administrator to disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or an officer or employee of the administrator.

(c) The administrator shall regulate transactions between a viatical settlement provider or person acting as an agent of a viatical settlement provider and a subsequent investor, while the authority of the director of the division of insurance extends to the regulation of viatical settlement contracts under AS 21.89.110.

**Sec. 45.55.910. Investigations and subpoenas.** (a) The administrator may

(1) make public or private investigations inside or outside this state considered necessary to determine whether a person has violated or is about to violate any provision of this chapter or a regulation or order under this chapter, or to aid in the enforcement of this chapter or in the adopting regulations and forms under this chapter;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) publish information concerning a violation of this chapter or a regulation or order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the administrator considers relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to a person, the superior court, upon application by the administrator, may issue to the person an order requiring the person to appear before the administrator, or the officer designated by the administrator, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) A person is not excused from attending and testifying or from producing a document or record before the administrator, or in obedience to the subpoena of the administrator or officer designated by the administrator, or in a proceeding instituted by the administrator, on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) Notwithstanding AS 45.55.905(b), all investigative files are confidential, except that they must be disclosed by the administrator as required for discovery in an administrative or a judicial proceeding.

**Sec. 45.55.915. Reimbursement of expenses incident to examination or investigation.** (a) The administrator may require an issuer, broker-dealer,

agent, investment adviser representative, federal covered adviser, or state investment adviser to reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination or investigation under this chapter.

(b) The administrator may by regulation or order adopt a schedule of charges for annual examination and investigation of issuers, broker-dealers,

agents, investment adviser representatives, federal covered advisers, and state investment advisers.

(c) If an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or state investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of the funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien on all of the assets and property in this state of the issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or state investment adviser, and the amount may be recovered by the attorney general on behalf of the state.

(d) Failure of the issuer, broker-dealer, agent, investment adviser representative, or state investment adviser to pay fees and expenses under this section is a wilful violation of this chapter and the violation falls within the provisions of AS 45.55.060, 45.55.120, 45.55.920 and 45.55.925.

**Sec. 45.55.920. Orders, injunctions, and civil penalties.** (a) If it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, the administrator may

(1) in the public interest or for the protection of investors, issue an order

(A) directing the person to cease and desist from continuing the act or practice;

(B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and

(C) voiding the proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(b) The administrator may issue an order against an applicant, registered person, or other person who knowingly or intentionally violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.

(c) For violations not covered by (b) of this section, the administrator may issue an order against an applicant, registered person, or other person who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or

not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.

(d) Before issuing an order under (a)(1), (b), or (c) of this section, the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order under (a)(1) of this section pending the hearing, which remains in effect until 10 days after the hearing is held and which becomes final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice.

(e) After an order issued by the administrator under (b) or (c) of this section becomes final and all rights of appeal are exhausted, the administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for judgment does not reopen the final order to further substantive review unless the court orders otherwise. A judgment entered under this subsection may be executed on and levied under in the manner provided under AS 09.35.

**Sec. 45.55.925. Criminal penalties.** (a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except AS 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160, or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.

(b) The administrator may refer the evidence that is available concerning violations of this chapter or a regulation or order under this chapter to the attorney general who may, with or without a reference, institute appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the state to punish a person for conduct that constitutes a crime by statute or at common law.

**Sec. 45.55.930. Civil liability to buyers.** (a) A person is liable to the person buying the security from the person for the consideration paid for the security, together with interest at eight percent a year or the stated rate of the security if the security has a stated, fixed rate less than eight percent, from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, on the tender of the security, or for damages if the buyer no longer owns the security, if the seller offers or sells a security

(1) other than a federal covered security, in violation of AS 45.55.030(a), 45.55.070, or 45.55.170(b) or of a regulation or order under AS 45.55.150 that requires the filing of sales literature before it is used, or of a condition imposed under AS 45.55.100(d) or 45.55.110(g) or (h), or

(2) by means of an untrue statement of a material fact, or omits to state a material fact, the omission of which makes a statement misleading.

(b) Damages are the amount that would be recoverable on a tender less the value of the security when the buyer disposed of it and interest at eight percent a year, or the stated rate of the security if the security had a stated, fixed rate less than eight percent, from the date of disposition.

(c) Every person who directly or indirectly controls a seller liable under (a) of this section, every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is liable sustains the burden of proof that the nonseller did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons liable.

(d) A tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this chapter survives the death of a person who might have been a plaintiff or defendant.

(f) A person may not sue under this section more than three years after the contract of sale, except as otherwise provided in this subsection. For a violation of (a)(2) of this section or AS 45.55.010, an action under this section may be brought within three years after the sale or two years after the person bringing the action discovered or should have discovered the facts on which the action is based, whichever is later. Failure to bring an action on a timely basis is an affirmative defense. A person may not sue under this section if the buyer received

(1) a written offer, before suit and at a time when the buyer owned the security, to refund the consideration paid together with interest at eight percent a year, or the stated rate of the security if the security has a stated, fixed rate less than eight percent, from the date of payment, less the amount of income received on the security, and the buyer failed to accept the offer within 30 days of its receipt, or

(2) the offer before suit and at a time when the buyer did not own the security unless the buyer rejected the offer in writing within 30 days of its receipt.

(g) A person who makes or engages in the performance of a contract in violation of a provision of this chapter or a regulation or an order under this chapter, or who acquires a purported right under the contract with knowledge of the facts by reason of which its making or performance is in violation of this chapter, may not base a suit on the contract.

(h) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with a provision of this chapter or a regulation or order under this chapter is void.

(i) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.55.040(f).



(j) Notwithstanding the time limitation in (f) of this section, an action under this section may be started after receipt of a written offer described in (a) of this section if the buyer accepted the payment offer within 30 days after receipt of the offer and has not been paid the full amount offered.

(k) An offer to repay the buyer under this section involves the offer or sale of a security, and the transaction must be registered under this chapter or exempt from registration under AS 45.55.900.

**Sec. 45.55.935. Hearings.** (a) The administrator shall adopt regulations, consistent with the provisions of this chapter, governing administrative hearings conducted by the administrator or a designee of the administrator for the following:

(1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in these instances, the administrator shall promptly send a notice of opportunity for hearing to the issuer of the securities and to all persons who have filed with the department a notice of intention to sell the securities; and

(2) orders issued under AS 45.55.060; before the administrator enters an order under AS 45.55.060, the administrator shall send to the person involved a notice of opportunity for hearing; if the person involved is an agent or investment adviser representative, then the administrator shall, in addition, notify the employing broker-dealer, state investment adviser, federal covered adviser, or issuer.

(b) In conducting a hearing in accordance with (a) of this section, the administrator may issue a subpoena to compel the attendance of any witness or party and to compel production of evidence.

**Sec. 45.55.940. Judicial review of orders.** (a) A person aggrieved by a final order of the administrator may obtain a review of the order in the superior court by filing, in accordance with the Rules of Appellate Procedure, a notice of appeal. A copy of the notice of appeal shall be served immediately upon the administrator, and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these are filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b) The commencement of proceedings under (a) of this section does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

**Sec. 45.55.950. Regulations, forms, orders, and hearings.** (a) The administrator may make, adopt, amend, and rescind the regulations, forms, and orders that are necessary to carry out this chapter, including regulations and forms governing registration statements, applications, and reports, and defining terms, whether or not used in this chapter insofar as the definitions are not inconsistent with this chapter. For the purpose of regulations and forms, the administrator may classify securities, persons, and matters within the jurisdiction of the administrator, and prescribe different requirements for different classes.

(b) A regulation, form, or order may not be made, adopted, amended, or rescinded unless the administrator finds that the action is necessary or

appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In adopting regulations and forms the administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this section to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) All financial statements shall be prepared in accordance with generally accepted accounting practices. The administrator may by regulation or order prescribe

(1) the form and content of financial statements required under this chapter;

(2) the circumstances under which consolidated financial statements shall be filed; and

(3) whether any required financial statements shall be certified by independent or certified public accountants.

(d) A provision of this chapter imposing liability does not apply to an act done or omitted in good faith in conformity with a regulation, form, or order of the administrator, notwithstanding that the regulation, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid.

(e) Every hearing in an administrative proceeding shall be public unless the administrator in the exercise of discretion grants a request joined in by all the respondents that the hearing be conducted privately.

**Sec. 45.55.960. Administrative Procedure Act applies.** AS 44.62

(Administrative Procedure Act) applies to all regulations adopted or authorized under this chapter.

**Sec. 45.55.970. Administrative files and opinions.** (a) A document is filed when it is received by the administrator.

(b) The administrator shall keep a register of all applications for registration and registration statements that are or have ever been effective under this chapter, all notice filings under this chapter, and all denial, suspension, or revocation orders that have been entered under this chapter. The register must be open for public inspection.

(c) The information contained in or filed with a registration statement, application, notice filing, or report may be made available to the public under the regulations adopted by the administrator.

(d) Upon request and at the reasonable charges that the administrator prescribes, the administrator shall furnish to any person photostatic or other copies, certified under the seal of office if requested, of any entry in the register or any document which is a matter of public record. In a proceeding or prosecution under this chapter, a copy so certified is prima facie evidence of the contents of the entry or documents certified.

(e) The administrator may honor requests from interested persons for interpretative opinions and may establish appropriate fees by regulation.

**Sec. 45.55.980. Applicability of the chapter; service of process.** (a) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010, 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, 45.55.070, 45.55.075, 45.55.170, and 45.55.930 apply to persons who sell or offer to sell when an offer to

(1) sell is made in this state; or

(2) buy is made and accepted in this state.

(b) Unless the persons are exempt elsewhere in this chapter, AS 45.55.010, 45.55.025, 45.55.027, 45.55.028, 45.55.030(a), 45.55.035, and 45.55.170 apply to persons who buy or offer to buy when an offer to

(1) buy is made in this state; or

(2) sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer

(1) originates from this state;

(2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;

(3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;

(4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title or lease on land in the state, including submerged land, regardless of where the offer is made; or

(5) is for an interest or participation in real property located in the state, or in a domestic corporation, a domestic limited liability company, a domestic limited partnership, or a domestic limited liability partnership; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at a post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when

(1) the publisher circulates or there is circulated on behalf of the publisher in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months; or

(2) a radio or television program originating outside this state is received in this state.

(f) AS 45.55.020, 45.55.023, 45.55.030(c), 45.55.030(e), 45.55.040(h), and 45.55.170, so far as state investment advisers, federal covered advisers, and investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, regardless of whether either party is then present in this state.

(g) An applicant for registration under this chapter, an issuer that proposes to offer a security in this state through a person acting on an agency basis in the common law sense, and a person making a notice filing under this chapter shall file with the administrator, in the form that the administrator prescribes by regulation, an irrevocable consent appointing the administrator or a successor in office to be the applicant's or issuer's attorney to receive service of lawful process in a civil suit, an action, or a proceeding against the applicant or issuer or a successor executor or administrator that arises under this chapter or a regulation or order under this chapter after the consent has been filed with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless

(1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the administrator; and

(2) the plaintiff's affidavit of mailing is filed in the case on or before the return day of the process, if any, or within the further time that the court allows.

(h) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or a regulation or order under this chapter, and the person has not filed a consent to service of process under (g) of this section and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct is considered equivalent to the appointment of the administrator or a successor in office to be the person's attorney to receive service of process in a civil suit, action, or proceeding against the person or a successor executor or administrator which grows out of that conduct and which is brought under this chapter or a regulation or order under this chapter, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the administrator, but service is not effective unless

(1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last known address of the defendant or respondent or takes other steps which are reasonably calculated to give actual notice; and

(2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before the administrator, shall order the continuance which is necessary to afford the defendant or respondent reasonable opportunity to defend.

**Sec. 45.55.990. Definitions.** In this chapter unless the context otherwise requires:

(1) "administrator" means the commissioner of community and economic development or a designee of the commissioner;

(2) "advisory client" means a person to whom services are provided under an investment advisory contract;

(3) "advisory fee" means the fee for providing services under an investment advisory contract;

(4) "advisory services" means advising a person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise;

(5) "agent" means an individual other than a broker-dealer who represents a broker-dealer or an issuer in effecting or attempting to effect purchase or sale of securities; a partner, an officer, or a director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the person otherwise comes within this definition; "agent" does not include an individual who represents

(A) an issuer in effecting transactions

(i) in a security exempted by AS 45.55.900(a);

(ii) exempted by AS 45.55.900 (b);

(iii) in a covered security as described in 15 U.S.C.

77r(b)(3) and (4)(D) (Securities Act of 1933); or

(iv) with existing employees, partners, or directors of the issuer if a commission or other remuneration is not paid or given directly or indirectly for soliciting any person in this state; or

(B) a broker-dealer in effecting transactions in this state described in 15 U.S.C. 78o(h)(2) and (3) (Securities Exchange Act of 1934);

(6) "Bank Holding Company Act of 1956" means 12 U.S.C. 1841 - 1850, as that act exists on or after October 1, 1999;

(7) "broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account; "broker-dealer" does not include

(A) an agent;

(B) an issuer;

(C) a bank, savings institution, or trust company;

(D) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(E) a person who has no place of business in this state if, during a period of 12 consecutive months, the person does not effect more than 15 transactions at the initiation and direction of the customer and on behalf of residents of this state regardless of whether the residents are then present in this state and does not direct any offers initiated by the person to sell or

buy into this state in any manner to persons other than those specified in (D) of this paragraph, regardless of whether the offeror or any offeree is then present in this state;

(8) "clients who are natural persons" means natural persons who are clients of a state investment adviser or federal covered adviser, except that natural persons with at least \$750,000 under management with the state investment adviser or federal covered adviser or with a net worth of at least \$1,500,000 at the time they initially contract for services described in (15)(A)(i) of this section, and other natural persons who may be designated by regulation or order of the administrator, are not considered natural persons for the purpose of determining under (15)(A)(ii) of this section if a supervised person provides the services described under (15)(A)(i) of this section to natural persons;

(9) "federal covered adviser" means a person who is registered with the United States Securities and Exchange Commission under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940); "federal covered adviser" does not include a person that is excluded from the definition of "state investment adviser" under (34)(B)(i)-(v), (vii), or (viii) of this section;

(10) "federal covered security" means a security that is a covered security under 15 U.S.C. 77r(b) (Securities Act of 1933), or regulations adopted under that act;

(11) "Federal Deposit Insurance Act" means 12 U.S.C. 1811 - 1835a, as that act exists on or after October 1, 1999;

(12) "fraud," "deceit," and "defraud" are not limited to common-law deceit;

(13) "guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(14) "Home Owners' Loan Act" means 12 U.S.C. 1461 - 1470, as that act exists on or after October 1, 1999;

(15) "investment adviser representative"

(A) means a natural person who

(i) makes a recommendation or otherwise renders advice regarding securities; manages accounts or portfolios of clients; determines which recommendation or advice regarding securities should be given; solicits, offers, or negotiates for the sale of or sells advisory services; or supervises employees who perform an activity described in this sub-paragraph; and

(ii) is a supervised person of a state investment adviser that is registered or required to be registered under this chapter if a substantial portion of the business of the supervised person is providing to clients who are natural persons the services described in (i) of this subparagraph, or who is a supervised person of a federal covered adviser, has a place of business located in this state, and has six or more clients who are natural persons, if a substantial portion of the business of the supervised person is providing to clients who are natural persons the services described in (i) of this subparagraph;

(B) means other persons who are not otherwise covered by this paragraph but who are designated by regulation or order of the administrator;

- (C) except persons covered by (36)(A)(ii) of this section, does not include a person that would not be defined as an investment adviser representative under 17 C.F.R. 275.203A-3 adopted under 15 U.S.C. 80b-3a (Investment Advisers Act of 1940), as that regulation exists on or after October 1, 1999;
- (16) "Investment Advisers Act of 1940" means 15 U.S.C. 80b-1 - 80b-21, as that act exists on or after October 1, 1999;
- (17) "investment advisory business" means a business in which a person receives compensation primarily for providing advisory services;
- (18) "investment advisory contract" means a contract in which one person receives consideration from another person primarily for providing advisory services;
- (19) "Investment Company Act of 1940" means 15 U.S.C. 80a-1 - 80a-64, as that act exists on or after October 1, 1999;
- (20) "issuer" means a person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued;
- (21) "NASDAQ" means National Association of Securities Dealers Automatic Quotation System;
- (22) "National Securities Markets Improvement Act of 1996" means P.L. 104-290, 101 Stat. 3416 - 3440, as that act exists on or after October 1, 1999;
- (23) "nonissuer" means not directly or indirectly for the benefit of the issuer;
- (24) "notice filing" means a filing made under AS 45.55.040 (h) or 45.55.075 unless the context indicates otherwise;
- (25) "person" means an individual, a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (26) "place of business" of a state investment adviser, investment adviser representative, or federal covered adviser means
- (A) an office at which the state investment adviser, federal covered adviser, or investment adviser representative regularly provides advisory services, solicits, meets with, or otherwise communicates with clients; and
  - (B) another location that is held out to the general public as a location at which the state investment adviser, federal covered adviser, or investment adviser representative provides advisory services, solicits, meets with, or otherwise communicates with clients;
- (27) "principal place of business" of a state investment adviser, investment adviser representative, or federal covered adviser means the executive office of

the state investment adviser, investment adviser representative, or federal covered adviser from which the officers, partners, or managers of the state investment adviser, investment adviser representative, or federal covered adviser direct, control, and coordinate the activities of the state investment adviser, investment adviser representative, or federal covered adviser;

(28) "sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value; "offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value; a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value; a purported gift of assessable stock is considered to involve an offer and sale; every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(29) "Securities Act of 1933" means 15 U.S.C. 77a - 77b, as that act exists on or after October 1, 1999;

(30) "Securities Exchange Act of 1934" means 15 U.S.C. 78a - 78ll, as that act exists on or after October 1, 1999;

(31) "securities business" means a business that provides the services provided by

(A) state investment advisers, federal covered advisers, or investment adviser representatives; or

(B) broker-dealers, issuers, or agents of broker-dealers or issuers;

(32) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; limited liability company interest under AS 10.50, notwithstanding the limitations of AS 45.08.103 (c); collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; viatical settlement interest; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land; an option on a contract for the future delivery of agricultural or mineral commodities or any other commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission; however, the contract or option is not subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a bona fide exchange or board of trade and offered or sold to the public by a broker-dealer or agent registered under this chapter; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include an insurance or



endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period;

(33) "state" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico;

(34) "state investment adviser"

(A) means

(i) a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or who, for compensation, engages in this state in the business of managing an investment or trading account in securities for other persons;

(ii) a financial planner or other person who, as an integral component of other financially related services, provides the services described in (i) of this subparagraph to others for compensation and as part of a business or who holds out to provide the services described in (i) of this subparagraph to others for compensation;

(B) does not include

(i) an investment adviser representative;

(ii) a savings institution, a trust company, a bank holding company as defined in 12 U.S.C. 1841 (Bank Holding Company Act of 1956), or a bank that is not an investment company;

(iii) a lawyer, an accountant, an engineer, or a teacher whose performance of the services described in (A)(i) of this paragraph is incidental to the practice of the person's profession;

(iv) a broker-dealer or its agent whose performance of the services described in (A)(i) of this paragraph is incidental to the conduct of business as a broker-dealer or an agent and who does not receive special compensation for the services;

(v) a publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person that is a federal covered adviser;

(vii) a person whose sole clients are the person's spouse, parents, children, or siblings by blood or adoption, and who does not hold out to provide the services described in (A)(i) of this paragraph to the general public;

(viii) other persons not within the intent of this paragraph whom the administrator may designate by regulation or order;

(35) "substantial portion of the business" means that more than 10 percent of the clients of a supervised person during the preceding 12 months are clients who are natural persons to whom the supervised person is providing the services described in (15)(A)(i) of this section;

(36) "supervised person"

(A) means

(i) a partner, an officer, a director, or another person occupying a similar status or performing similar functions, an employee of a state investment adviser or federal covered adviser, or another person who provides services described in (15)(A)(i) of this section to clients on behalf of the state investment adviser or federal covered adviser if the person is subject to the supervision and control of the state investment adviser or federal covered adviser;

(ii) a third-party natural person employed primarily to solicit, offer, or negotiate for the sale of or to sell the services described in (15)(A)(i) of this section for a state investment adviser or federal covered adviser, even if the person is not subject to the supervision or control of the state investment adviser or federal covered adviser;

(B) does not include a person who

(i) does not on a regular basis solicit, meet with, or otherwise communicate with clients of a state investment adviser or federal covered adviser as a normal and ordinary part of the duties of the person; or

(ii) provides the services described in (15)(A)(i) of this section only by means of written material or oral statements that do not claim to meet the objectives or needs of specific individuals or accounts.

(37) "viatical settlement interest"

(A) means the entire interest or any fractional interest in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract;

(B) does not include the initial purchase from the viator by a viatical settlement provider;

(38) "viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract.

**Sec. 45.55.995. Short title.** This chapter may be cited as the Alaska Securities Act.